



General Assembly

January Session, 2003

**Committee Bill No. 5098**

LCO No. 2951

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT ADOPTING AMENDMENTS TO ARTICLE 3 OF THE UNIFORM  
COMMERCIAL CODE CONCERNING NEGOTIABLE INSTRUMENTS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 42a-3-103 of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) In this article:

4 (1) "Acceptor" means a drawee who has accepted a draft.

5 (2) "Consumer account" means an account established by an  
6 individual primarily for personal, family or household purposes.

7 (3) "Consumer transaction" means a transaction in which an  
8 individual incurs an obligation primarily for personal, family or  
9 household purposes.

10 [(2)] (4) "Drawee" means a person ordered in a draft to make  
11 payment.

12 [(3)] (5) "Drawer" means a person who signs or is identified in a

13 draft as a person ordering payment.

14 [(4)] (6) "Good faith" means honesty in fact and the observance of  
15 reasonable commercial standards of fair dealing.

16 [(5)] (7) "Maker" means a person who signs or is identified in a note  
17 as a person undertaking to pay.

18 [(6)] (8) "Order" means a written instruction to pay money signed by  
19 the person giving the instruction. The instruction may be addressed to  
20 any person, including the person giving the instruction, or to one or  
21 more persons jointly or in the alternative but not in succession. An  
22 authorization to pay is not an order unless the person authorized to  
23 pay is also instructed to pay.

24 [(7)] (9) "Ordinary care" in the case of a person engaged in business  
25 means observance of reasonable commercial standards, prevailing in  
26 the area in which the person is located, with respect to the business in  
27 which the person is engaged. In the case of a bank that takes an  
28 instrument for processing for collection or payment by automated  
29 means, reasonable commercial standards do not require the bank to  
30 examine the instrument if the failure to examine does not violate the  
31 bank's prescribed procedures and the bank's procedures do not vary  
32 unreasonably from general banking usage not disapproved by this  
33 article or article 4.

34 [(8)] (10) "Party" means a party to an instrument.

35 (11) "Principal obligor", with respect to an instrument, means the  
36 accommodated party or any other party to the instrument against  
37 whom a secondary obligor has recourse under this article.

38 [(9)] (12) "Promise" means a written undertaking to pay money  
39 signed by the person undertaking to pay. An acknowledgment of an  
40 obligation by the obligor is not a promise unless the obligor also  
41 undertakes to pay the obligation.

42 [(10)] (13) "Prove" with respect to a fact means to meet the burden of  
43 establishing the fact. ] as defined in section 42a-1-201(8).]

44 (14) "Record" means information that is inscribed on a tangible  
45 medium or that is stored in an electronic or other medium and is  
46 retrievable in perceivable form.

47 [(11)] (15) "Remitter" means a person who purchases an instrument  
48 from its issuer if the instrument is payable to an identified person  
49 other than the purchaser.

50 (16) "Remotely-created consumer item" means an item drawn on a  
51 consumer account which is not created by the payor bank and does not  
52 bear a handwritten signature purporting to be the signature of the  
53 drawer.

54 (17) "Secondary obligor", with respect to an instrument, means (A)  
55 an endorser or an accommodation party, (B) a drawer having the  
56 obligation described in subsection (d) of section 42a-3-414, or (C) any  
57 other party to the instrument that has recourse against another party to  
58 the instrument pursuant to subsection (b) of section 42a-3-116, as  
59 amended by this act.

60 (b) Other definitions applying to this article and the sections in  
61 which they appear are:

- T1 "Acceptance". Section 42a-3-409.  
T2 "Accommodated party". Section 42a-3-419.  
T3 "Accommodation party". Section 42a-3-419.  
T4 "Account". Section 42a-4-104.  
T5 "Alteration". Section 42a-3-407.  
T6 "Anomalous endorsement". Section 42a-3-205.  
T7 "Blank endorsement". Section 42a-3-205.  
T8 "Cashier's check". Section 42a-3-104.

T9	"Certificate of deposit". Section 42a-3-104.
T10	"Certified check". Section 42a-3-409.
T11	"Check". Section 42a-3-104.
T12	"Consideration". Section 42a-3-303.
T13	"Draft". Section 42a-3-104.
T14	"Endorsement". Section 42a-3-204.
T15	"Endorser". Section 42a-3-204.
T16	"Holder in due course". Section 42a-3-302.
T17	"Incomplete instrument". Section 42a-3-115.
T18	"Instrument". Section 42a-3-104.
T19	"Issue". Section 42a-3-105.
T20	"Issuer". Section 42a-3-105.
T21	"Negotiable instrument". Section 42a-3-104.
T22	"Negotiation". Section 42a-3-201.
T23	"Note". Section 42a-3-104.
T24	"Payable at a definite time". Section 42a-3-108.
T25	"Payable on demand". Section 42a-3-108.
T26	"Payable to bearer". Section 42a-3-109.
T27	"Payable to order". Section 42a-3-109.
T28	"Payment". Section 42a-3-602.
T29	"Person entitled to enforce". Section 42a-3-301.
T30	"Presentment". Section 42a-3-501.
T31	"Reacquisition". Section 42a-3-207.
T32	"Special endorsement". Section 42a-3-205.
T33	"Teller's check". Section 42a-3-104.
T34	"Transfer of instrument". Section 42a-3-203.
T35	"Traveler's check". Section 42a-3-104.
T36	"Value". Section 42a-3-303.

62 (c) The following definitions in other articles apply to this article:

T37	["Bank". Section 42a-4-105.]
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T38 "Banking day". Section 42a-4-104.  
T39 "Clearing house". Section 42a-4-104.  
T40 "Collecting bank". Section 42a-4-105.  
T41 "Depository bank". Section 42a-4-105.  
T42 "Documentary draft". Section 42a-4-104.  
T43 "Intermediary bank". Section 42a-4-105.  
T44 "Item". Section 42a-4-104.  
T45 "Payor bank". Section 42a-4-105.  
T46 "Suspends payments". Section 42a-4-104.

63 (d) In addition, article 1 contains general definitions and principles  
64 of construction and interpretation applicable throughout this article.

65 Sec. 2. Section 42a-3-106 of the general statutes is repealed and the  
66 following is substituted in lieu thereof (*Effective October 1, 2003*):

67 (a) Except as provided in this section, for the purposes of [section  
68 42a-3-104(a)] subsection (a) of section 42a-3-104, a promise or order is  
69 unconditional unless it states [(i)] (1) an express condition to payment,  
70 [(ii)] (2) that the promise or order is subject to or governed by another  
71 [writing] record, or [(iii)] (3) that rights or obligations with respect to  
72 the promise or order are stated in another [writing] record. A reference  
73 to another [writing] record does not of itself make the promise or order  
74 conditional.

75 (b) A promise or order is not made conditional [(i)] (1) by a  
76 reference to another [writing] record for a statement of rights with  
77 respect to collateral, prepayment [,] or acceleration, or [(ii)] (2) because  
78 payment is limited to resort to a particular fund or source.

79 (c) If a promise or order requires, as a condition to payment, a  
80 countersignature by a person whose specimen signature appears on  
81 the promise or order, the condition does not make the promise or  
82 order conditional for the purposes of [section 42a-3-104(a)] subsection  
83 (a) of section 42a-3-104. If the person whose specimen signature

84 appears on an instrument fails to countersign the instrument, the  
85 failure to countersign is a defense to the obligation of the issuer, but  
86 the failure does not prevent a transferee of the instrument from  
87 becoming a holder of the instrument.

88 (d) If a promise or order at the time it is issued or first comes into  
89 possession of a holder contains a statement, required by applicable  
90 statutory or administrative law, to the effect that the rights of a holder  
91 or transferee are subject to claims or defenses that the issuer could  
92 assert against the original payee, the promise or order is not thereby  
93 made conditional for the purposes of section [42a-3-104(a)] subsection  
94 (a) of section 42a-3-104; but if the promise or order is an instrument,  
95 there cannot be a holder in due course of the instrument.

96 Sec. 3. Section 42a-3-116 of the general statutes is repealed and the  
97 following is substituted in lieu thereof (*Effective October 1, 2003*):

98 (a) Except as otherwise provided in the instrument, two or more  
99 persons who have the same liability on an instrument as makers,  
100 drawers, acceptors, endorsers who endorse as joint payees, or  
101 anomalous endorsers are jointly and severally liable in the capacity in  
102 which they sign.

103 (b) Except as provided in [section 42a-3-419(e)] subsection (f) of  
104 section 42a-3-419, as amended by this act, or by agreement of the  
105 affected parties, a party having joint and several liability who pays the  
106 instrument is entitled to receive from any party having the same joint  
107 and several liability contribution in accordance with applicable law.

108 [(c) Discharge of one party having joint and several liability by a  
109 person entitled to enforce the instrument does not affect the right  
110 under subsection (b) of a party having the same joint and several  
111 liability to receive contribution from the party discharged.]

112 Sec. 4. Section 42a-3-119 of the general statutes is repealed and the  
113 following is substituted in lieu thereof (*Effective October 1, 2003*):

114 In an action for breach of an obligation for which a third person is  
115 answerable over pursuant to this article or article 4, the defendant may  
116 give the third person [written] notice of the litigation in a record, and  
117 the person notified may then give similar notice to any other person  
118 who is answerable over. If the notice states [(i)] (1) that the person  
119 notified may come in and defend, and [(ii)] (2) that failure to do so will  
120 bind the person notified in an action later brought by the person giving  
121 the notice as to any determination of fact common to the two  
122 litigations, the person notified is so bound unless after seasonable  
123 receipt of the notice the person notified does come in and defend.

124 Sec. 5. Section 42a-3-305 of the general statutes is repealed and the  
125 following is substituted in lieu thereof (*Effective October 1, 2003*):

126 (a) Except as [stated in subsection (b)] otherwise provided in this  
127 section, the right to enforce the obligation of a party to pay an  
128 instrument is subject to the following:

129 (1) A defense of the obligor based on [(i)] (A) infancy of the obligor  
130 to the extent it is a defense to a simple contract, [(ii)] (B) duress, lack of  
131 legal capacity [,] or illegality of the transaction which, under other law,  
132 nullifies the obligation of the obligor, [(iii)] (C) fraud that induced the  
133 obligor to sign the instrument with neither knowledge nor reasonable  
134 opportunity to learn of its character or its essential terms, or [(iv)] (D)  
135 discharge of the obligor in insolvency proceedings;

136 (2) A defense of the obligor stated in another section of this article or  
137 a defense of the obligor that would be available if the person entitled to  
138 enforce the instrument were enforcing a right to payment under a  
139 simple contract; and

140 (3) A claim in recoupment of the obligor against the original payee  
141 of the instrument if the claim arose from the transaction that gave rise  
142 to the instrument; but the claim of the obligor may be asserted against  
143 a transferee of the instrument only to reduce the amount owing on the  
144 instrument at the time the action is brought.

145 (b) The right of a holder in due course to enforce the obligation of a  
146 party to pay the instrument is subject to defenses of the obligor stated  
147 in [subsection (a)(1)] subdivision (1) of subsection (a) of this section,  
148 but is not subject to defenses of the obligor stated in [subsection (a)(2)]  
149 subdivision (2) of subsection (a) of this section or claims in recoupment  
150 stated in [subsection (a)(3)] subdivision (3) of subsection (a) of this  
151 section against a person other than the holder.

152 (c) Except as stated in subsection (d) of this section, in an action to  
153 enforce the obligation of a party to pay the instrument, the obligor may  
154 not assert against the person entitled to enforce the instrument a  
155 defense, claim in recoupment, or claim to the instrument, as provided  
156 in section 42a-3-306, of another person, but the other person's claim to  
157 the instrument may be asserted by the obligor if the other person is  
158 joined in the action and personally asserts the claim against the person  
159 entitled to enforce the instrument. An obligor is not obliged to pay the  
160 instrument if the person seeking enforcement of the instrument does  
161 not have rights of a holder in due course and the obligor proves that  
162 the instrument is a lost or stolen instrument.

163 (d) In an action to enforce the obligation of an accommodation party  
164 to pay an instrument, the accommodation party may assert against the  
165 person entitled to enforce the instrument any defense or claim in  
166 recoupment under subsection (a) of this section that the  
167 accommodated party could assert against the person entitled to  
168 enforce the instrument, except the defenses of discharge in insolvency  
169 proceedings, infancy and lack of legal capacity.

170 (e) In a consumer transaction, if law other than this article requires  
171 that an instrument include a statement to the effect that the rights of a  
172 holder or transferee are subject to a claim or defense that the issuer  
173 could assert against the original payee, and the instrument does not  
174 include such a statement:

175 (1) The instrument has the same effect as if the instrument included  
176 such a statement;



177     (2) The issuer may assert against the holder or transferee all claims  
178     and defenses that would have been available if the instrument  
179     included such a statement; and

180     (3) The extent to which claims may be asserted against the holder or  
181     transferee is determined as if the instrument included such a  
182     statement.

183     (f) This section is subject to law other than this article that  
184     establishes a different rule for consumer transactions.

185     Sec. 6. Section 42a-3-309 of the general statutes is repealed and the  
186     following is substituted in lieu thereof (*Effective October 1, 2003*):

187     (a) A person not in possession of an instrument is entitled to enforce  
188     the instrument if:

189     [(i) the person was in possession of the instrument and] (1) The  
190     person seeking to enforce the instrument (A) was entitled to enforce  
191     [it] the instrument when loss of possession occurred, [(ii) the] or (B)  
192     has directly or indirectly acquired ownership of the instrument from a  
193     person who was entitled to enforce the instrument when loss of  
194     possession occurred;

195     (2) The loss of possession was not the result of a transfer by the  
196     person or a lawful seizure; [,] and

197     [(iii) the] (3) The person cannot reasonably obtain possession of the  
198     instrument because the instrument was destroyed, its whereabouts  
199     cannot be determined, or it is in the wrongful possession of an  
200     unknown person or a person that cannot be found or is not amenable  
201     to service of process.

202     (b) A person seeking enforcement of an instrument under  
203     subsection (a) of this section must prove the terms of the instrument  
204     and the person's right to enforce the instrument. If that proof is made,  
205     section 42a-3-308 applies to the case as if the person seeking

206 enforcement had produced the instrument. The court may not enter  
207 judgment in favor of the person seeking enforcement unless it finds  
208 that the person required to pay the instrument is adequately protected  
209 against loss that might occur by reason of a claim by another person to  
210 enforce the instrument. Adequate protection may be provided by any  
211 reasonable means.

212 Sec. 7. Section 42a-3-312 of the general statutes is repealed and the  
213 following is substituted in lieu thereof (*Effective October 1, 2003*):

214 (a) In this section:

215 (1) "Check" means a cashier's check, teller's check or certified check.

216 (2) "Claimant" means a person who claims the right to receive the  
217 amount of a cashier's check, teller's check or certified check that was  
218 lost, destroyed or stolen.

219 (3) "Declaration of loss" means a [written] statement, made in a  
220 record under penalty of perjury, to the effect that [(i)] (A) the declarer  
221 lost possession of a check, [(ii)] (B) the declarer is the drawer or payee  
222 of the check, in the case of a certified check, or the remitter or payee of  
223 the check, in the case of a cashier's check or teller's check, [(iii)] (C) the  
224 loss of possession was not the result of a transfer by the declarer or a  
225 lawful seizure, and [(iv)] (D) the declarer cannot reasonably obtain  
226 possession of the check because the check was destroyed, its  
227 whereabouts cannot be determined, or it is in the wrongful possession  
228 of an unknown person or a person that cannot be found or is not  
229 amenable to service of process.

230 (4) "Obligated bank" means the issuer of a cashier's check or teller's  
231 check or the acceptor of a certified check.

232 (b) A claimant may assert a claim to the amount of a check by a  
233 communication to the obligated bank describing the check with  
234 reasonable certainty and requesting payment of the amount of the  
235 check, if [(i)] (1) the claimant is the drawer or payee of a certified check

236 or the remitter or payee of a cashier's check or teller's check, [(ii)] (2)  
237 the communication contains or is accompanied by a declaration of loss  
238 of the claimant with respect to the check, [(iii)] (3) the communication  
239 is received at a time and in a manner affording the bank a reasonable  
240 time to act on it before the check is paid, and [(iv)] (4) the claimant  
241 provides reasonable identification if requested by the obligated bank.  
242 Delivery of a declaration of loss is a warranty of the truth of the  
243 statements made in the declaration. If a claim is asserted in compliance  
244 with this subsection, the following rules apply:

245 (1) The claim becomes enforceable at the later of [(i)] (A) the time the  
246 claim is asserted, or [(ii)] (B) the ninetieth day following the date of the  
247 check, in the case of a cashier's check or teller's check, or the ninetieth  
248 day following the date of the acceptance, in the case of a certified  
249 check.

250 (2) Until the claim becomes enforceable, it has no legal effect and the  
251 obligated bank may pay the check or, in the case of a teller's check,  
252 may permit the drawee to pay the check. Payment to a person entitled  
253 to enforce the check discharges all liability of the obligated bank with  
254 respect to the check.

255 (3) If the claim becomes enforceable before the check is presented  
256 for payment, the obligated bank is not obliged to pay the check.

257 (4) When the claim becomes enforceable, the obligated bank  
258 becomes obliged to pay the amount of the check to the claimant if  
259 payment of the check has not been made to a person entitled to enforce  
260 the check. Subject to [section 42a-4-302(a)(1)] subdivision (1) of  
261 subsection (a) of section 42a-4-302, payment to a claimant discharges  
262 all liability of the obligated bank with respect to the check.

263 (c) If the obligated bank pays the amount of a check to a claimant  
264 under subdivision (4) of subsection (b) of this section and the check is  
265 presented for payment by a person having rights of a holder in due  
266 course, the claimant is obliged to [(i)] (1) refund the payment to the

267 obligated bank if the check is paid, or [(ii)] (2) pay the amount of the  
268 check to the person having rights of a holder in due course if the check  
269 is dishonored.

270 (d) If a claimant has the right to assert a claim under subsection (b)  
271 of this section and is also a person entitled to enforce a cashier's check,  
272 teller's check or certified check which is lost, destroyed or stolen, the  
273 claimant may assert rights with respect to the check either under this  
274 section or section 42a-3-309, as amended by this act.

275 Sec. 8. Section 42a-3-416 of the general statutes is repealed and the  
276 following is substituted in lieu thereof (*Effective October 1, 2003*):

277 (a) A person who transfers an instrument for consideration warrants  
278 to the transferee and, if the transfer is by endorsement, to any  
279 subsequent transferee that:

280 (1) The warrantor is a person entitled to enforce the instrument;

281 (2) [all] All signatures on the instrument are authentic and  
282 authorized;

283 (3) [the] The instrument has not been altered;

284 (4) [the] The instrument is not subject to a defense or claim in  
285 recoupment of any party which can be asserted against the warrantor;  
286 [and]

287 (5) [the] The warrantor has no knowledge of any insolvency  
288 proceeding commenced with respect to the maker or acceptor or, in the  
289 case of an unaccepted draft, the drawer; and

290 (6) With respect to a remotely-created consumer item, the person on  
291 whose account the item is drawn authorized the issuance of the item in  
292 the amount for which the item is drawn.

293 (b) A person to whom the warranties under subsection (a) of this  
294 section are made and who took the instrument in good faith may

295 recover from the warrantor as damages for breach of warranty an  
296 amount equal to the loss suffered as a result of the breach, but not  
297 more than the amount of the instrument plus expenses and loss of  
298 interest incurred as a result of the breach.

299 (c) The warranties stated in subsection (a) of this section cannot be  
300 disclaimed with respect to checks. Unless notice of a claim for breach  
301 of warranty is given to the warrantor within thirty days after the  
302 claimant has reason to know of the breach and the identity of the  
303 warrantor, the liability of the warrantor under subsection (b) of this  
304 section is discharged to the extent of any loss caused by the delay in  
305 giving notice of the claim.

306 (d) A cause of action for breach of warranty under this section  
307 accrues when the claimant has reason to know of the breach.

308 Sec. 9. Section 42a-3-417 of the general statutes is repealed and the  
309 following is substituted in lieu thereof (*Effective October 1, 2003*):

310 (a) If an unaccepted draft is presented to the drawee for payment or  
311 acceptance and the drawee pays or accepts the draft, [(i)] (1) the person  
312 obtaining payment or acceptance, at the time of presentment, and [(ii)]  
313 (2) a previous transferor of the draft, at the time of transfer, warrant to  
314 the drawee making payment or accepting the draft in good faith that:

315 [(1)] (A) The warrantor is, or was, at the time the warrantor  
316 transferred the draft, a person entitled to enforce the draft or  
317 authorized to obtain payment or acceptance of the draft on behalf of a  
318 person entitled to enforce the draft; [(2) the]

319 (B) The draft has not been altered; [and (3) the]

320 (C) The warrantor has no knowledge that the signature of the  
321 drawer of the draft is unauthorized; and

322 (D) With respect to any remotely-created consumer item, the person  
323 on whose account the item is drawn authorized the issuance of the

324 item in the amount for which the item is drawn.

325 (b) A drawee making payment may recover from any warrantor  
326 damages for breach of warranty equal to the amount paid by the  
327 drawee less the amount the drawee received or is entitled to receive  
328 from the drawer because of the payment. In addition, the drawee is  
329 entitled to compensation for expenses and loss of interest resulting  
330 from the breach. The right of the drawee to recover damages under  
331 this subsection is not affected by any failure of the drawee to exercise  
332 ordinary care in making payment. If the drawee accepts the draft,  
333 breach of warranty is a defense to the obligation of the acceptor. If the  
334 acceptor makes payment with respect to the draft, the acceptor is  
335 entitled to recover from any warrantor for breach of warranty the  
336 amounts stated in this subsection.

337 (c) If a drawee asserts a claim for breach of warranty under  
338 subsection (a) of this section based on an unauthorized endorsement of  
339 the draft or an alteration of the draft, the warrantor may defend by  
340 proving that the endorsement is effective under section 42a-3-404 or  
341 42a-3-405 or the drawer is precluded under section 42a-3-406 or 42a-4-  
342 406 from asserting against the drawee the unauthorized endorsement  
343 or alteration.

344 (d) If [(i)] (1) a dishonored draft is presented for payment to the  
345 drawer or an endorser, or [(ii)] (2) any other instrument is presented  
346 for payment to a party obliged to pay the instrument, and [(iii)] (3)  
347 payment is received, the following rules apply:

348 [(1)] (A) The person obtaining payment and a prior transferor of the  
349 instrument warrant to the person making payment in good faith that  
350 the warrantor is, or was, at the time the warrantor transferred the  
351 instrument, a person entitled to enforce the instrument or authorized  
352 to obtain payment on behalf of a person entitled to enforce the  
353 instrument.

354 [(2)] (B) The person making payment may recover from any

355 warrantor for breach of warranty an amount equal to the amount paid  
356 plus expenses and loss of interest resulting from the breach.

357 (e) The warranties stated in subsections (a) and (d) of this section  
358 cannot be disclaimed with respect to checks. Unless notice of a claim  
359 for breach of warranty is given to the warrantor within thirty days  
360 after the claimant has reason to know of the breach and the identity of  
361 the warrantor, the liability of the warrantor under subsection (b) or (d)  
362 of this section is discharged to the extent of any loss caused by the  
363 delay in giving notice of the claim.

364 (f) A cause of action for breach of warranty under this section  
365 accrues when the claimant has reason to know of the breach.

366 Sec. 10. Section 42a-3-419 of the general statutes is repealed and the  
367 following is substituted in lieu thereof (*Effective October 1, 2003*):

368 (a) If an instrument is issued for value given for the benefit of a  
369 party to the instrument ("accommodated party") and another party to  
370 the instrument ("accommodation party") signs the instrument for the  
371 purpose of incurring liability on the instrument without being a direct  
372 beneficiary of the value given for the instrument, the instrument is  
373 signed by the accommodation party "for accommodation".

374 (b) An accommodation party may sign the instrument as maker,  
375 drawer, acceptor [ ] or endorser and, subject to subsection (d) of this  
376 section, is obliged to pay the instrument in the capacity in which the  
377 accommodation party signs. The obligation of an accommodation  
378 party may be enforced notwithstanding any statute of frauds and  
379 whether or not the accommodation party receives consideration for the  
380 accommodation.

381 (c) A person signing an instrument is presumed to be an  
382 accommodation party and there is notice that the instrument is signed  
383 for accommodation if the signature is an anomalous endorsement or is  
384 accompanied by words indicating that the signer is acting as surety or

385 guarantor with respect to the obligation of another party to the  
386 instrument. Except as provided in section 42a-3-605, as amended by  
387 this act, the obligation of an accommodation party to pay the  
388 instrument is not affected by the fact that the person enforcing the  
389 obligation had notice when the instrument was taken by that person  
390 that the accommodation party signed the instrument for  
391 accommodation.

392 (d) If the signature of a party to an instrument is accompanied by  
393 words indicating unambiguously that the party is guaranteeing  
394 collection rather than payment of the obligation of another party to the  
395 instrument, the signer is obliged to pay the amount due on the  
396 instrument to a person entitled to enforce the instrument only if [(i)] (1)  
397 execution of judgment against the other party has been returned  
398 unsatisfied, [(ii)] (2) the other party is insolvent or in an insolvency  
399 proceeding, [(iii)] (3) the other party cannot be served with process, or  
400 [(iv)] (4) it is otherwise apparent that payment cannot be obtained from  
401 the other party.

402 (e) If the signature of a party to an instrument is accompanied by  
403 words indicating that the party guarantees payment or the signer signs  
404 the instrument as an accommodation party in some other manner that  
405 does not unambiguously indicate an intention to guarantee collection  
406 rather than payment, the signer is obliged to pay the amount due on  
407 the instrument to a person entitled to enforce the instrument in the  
408 same circumstances as the accommodated party would be obliged,  
409 without prior resort to the accommodated party by the person entitled  
410 to enforce the instrument.

411 [(e)] (f) An accommodation party who pays the instrument is  
412 entitled to reimbursement from the accommodated party and is  
413 entitled to enforce the instrument against the accommodated party. In  
414 proper circumstances, an accommodation party may obtain relief that  
415 requires the accommodated party to perform its obligations on the  
416 instrument. An accommodated party [who] that pays the instrument



417 has no right of recourse against, and is not entitled to contribution  
418 from, an accommodation party.

419 Sec. 11. Section 42a-3-602 of the general statutes is repealed and the  
420 following is substituted in lieu thereof (*Effective October 1, 2003*):

421 (a) Subject to subsection ~~[(b)]~~ (e) of this section, an instrument is  
422 paid to the extent payment is made by or on behalf of a party obliged  
423 to pay the instrument (1) to a person entitled to enforce the instrument,  
424 or (2) to the assignor in the case of a mortgage debt that is assigned  
425 without sufficient notice to the party obliged to pay as provided in  
426 section 49-10.

427 (b) Subject to subsection (e) of this section, a note is paid to the  
428 extent payment is made by or on behalf of a party obliged to pay the  
429 note to a person that formerly was entitled to enforce the note only if at  
430 the time of the payment the party obliged to pay has not received  
431 adequate notification that the note has been transferred and that  
432 payment is to be made to the transferee. A notification is adequate  
433 only if it is signed by the transferor or the transferee, reasonably  
434 identifies the transferred note and provides an address at which  
435 payments subsequently are to be made. Upon request, a transferee  
436 shall seasonably furnish reasonable proof that the note has been  
437 transferred. Unless the transferee complies with the request, a payment  
438 to the person that formerly was entitled to enforce the note is effective  
439 for purposes of subsection (c) of this section even if the party obliged  
440 to pay the note has received a notification under this subsection.

441 [To the extent of the payment] (c) Subject to subsection (e) of this  
442 section, to the extent of a payment under subsections (a) and (b) of this  
443 section, the obligation of the party obliged to pay the instrument is  
444 discharged even though payment is made with knowledge of a claim  
445 to the instrument under section 42a-3-306 by another person.

446 (d) Subject to subsection (e) of this section, a transferee, or any party  
447 that has acquired rights in the instrument directly or indirectly from a

448 transferee, including any such party that has rights as a holder in due  
449 course, is deemed to have notice of any payment that is made under  
450 subsection (b) of this section after the date that the note is transferred  
451 to the transferee but before the party obliged to pay the note receives  
452 adequate notification of the transfer.

453 [(b)] (e) The obligation of a party to pay the instrument is not  
454 discharged under [subsection (a)] this section if:

455 (1) A claim to the instrument under section 42a-3-306 is enforceable  
456 against the party receiving payment and [(i)] (A) payment is made  
457 with knowledge by the payor that payment is prohibited by injunction  
458 or similar process of a court of competent jurisdiction, or [(ii)] (B) in the  
459 case of an instrument other than a cashier's check, teller's check [,] or  
460 certified check, the party making payment accepted, from the person  
461 having a claim to the instrument, indemnity against loss resulting from  
462 refusal to pay the person entitled to enforce the instrument; or

463 (2) [the] The person making payment knows that the instrument is a  
464 stolen instrument and pays a person it knows is in wrongful  
465 possession of the instrument.

466 (f) As used in this section, "signed", with respect to a record that is  
467 not a writing, includes the attachment to or logical association with the  
468 record of an electronic symbol, sound or process to or with the record  
469 with the present intent to adopt or accept the record.

470 Sec. 12. Section 42a-3-604 of the general statutes is repealed and the  
471 following is substituted in lieu thereof (*Effective October 1, 2003*):

472 (a) A person entitled to enforce an instrument, with or without  
473 consideration, may discharge the obligation of a party to pay the  
474 instrument [(i)] (1) by an intentional voluntary act, such as surrender  
475 of the instrument to the party, destruction, mutilation [,] or  
476 cancellation of the instrument, cancellation or striking out of the  
477 party's signature, or the addition of words to the instrument indicating

478 discharge, or [(ii)] (2) by agreeing not to sue or otherwise renouncing  
479 rights against the party by a signed [writing] record.

480 (b) Cancellation or striking out of an endorsement pursuant to  
481 subsection (a) of this section does not affect the status and rights of a  
482 party derived from the endorsement.

483 (c) As used in this section, "signed", with respect to a record that is  
484 not a writing, includes the attachment to or logical association with the  
485 record of an electronic symbol, sound or process to or with the record  
486 with the present intent to adopt or accept the record.

487 Sec. 13. Section 42a-3-605 of the general statutes is repealed and the  
488 following is substituted in lieu thereof (*Effective October 1, 2003*):

489 [(a) In this section, the term "endorser" includes a drawer having the  
490 obligation described in section 42a-3-414(d).

491 (b) Discharge, under section 42a-3-604, of the obligation of a party to  
492 pay an instrument does not discharge the obligation of an endorser or  
493 accommodation party having a right of recourse against the  
494 discharged party.

495 (c) If a person entitled to enforce an instrument agrees, with or  
496 without consideration, to an extension of the due date of the obligation  
497 of a party to pay the instrument, the extension discharges an endorser  
498 or accommodation party having a right of recourse against the party  
499 whose obligation is extended to the extent the endorser or  
500 accommodation party proves that the extension caused loss to the  
501 endorser or accommodation party with respect to the right of recourse.

502 (d) If a person entitled to enforce an instrument agrees, with or  
503 without consideration, to a material modification of the obligation of a  
504 party other than an extension of the due date, the modification  
505 discharges the obligation of an endorser or accommodation party  
506 having a right of recourse against the person whose obligation is  
507 modified to the extent the modification causes loss to the endorser or

508 accommodation party with respect to the right of recourse. The loss  
509 suffered by the endorser or accommodation party as a result of the  
510 modification is equal to the amount of the right of recourse unless the  
511 person enforcing the instrument proves that no loss was caused by the  
512 modification or that the loss caused by the modification was an  
513 amount less than the amount of the right of recourse.

514 (e) If the obligation of a party to pay an instrument is secured by an  
515 interest in collateral and a person entitled to enforce the instrument  
516 impairs the value of the interest in collateral, the obligation of an  
517 endorser or accommodation party having a right of recourse against  
518 the obligor is discharged to the extent of the impairment. The value of  
519 an interest in collateral is impaired to the extent (i) the value of the  
520 interest is reduced to an amount less than the amount of the right of  
521 recourse of the party asserting discharge, or (ii) the reduction in value  
522 of the interest causes an increase in the amount by which the amount  
523 of the right of recourse exceeds the value of the interest. The burden of  
524 proving impairment is on the party asserting discharge.

525 (f) If the obligation of a party is secured by an interest in collateral  
526 not provided by an accommodation party and a person entitled to  
527 enforce the instrument impairs the value of the interest in collateral,  
528 the obligation of any party who is jointly and severally liable with  
529 respect to the secured obligation is discharged to the extent the  
530 impairment causes the party asserting discharge to pay more than that  
531 party would have been obliged to pay, taking into account rights of  
532 contribution, if impairment had not occurred. If the party asserting  
533 discharge is an accommodation party not entitled to discharge under  
534 subsection (e), the party is deemed to have a right to contribution  
535 based on joint and several liability rather than a right to  
536 reimbursement. The burden of proving impairment is on the party  
537 asserting discharge.

538 (g) Under subsection (e) or (f), impairing value of an interest in  
539 collateral includes (i) failure to obtain or maintain perfection or

540 recordation of the interest in collateral, (ii) release of collateral without  
541 substitution of collateral of equal value, (iii) failure to perform a duty  
542 to preserve the value of collateral owed, under article 9 or other law, to  
543 a debtor or surety or other person secondarily liable, or (iv) failure to  
544 comply with applicable law in disposing of collateral.

545 (h) An accommodation party is not discharged under subsection (c),  
546 (d) or (e) unless the person entitled to enforce the instrument knows of  
547 the accommodation or has notice under section 42a-3-419(c) that the  
548 instrument was signed for accommodation.

549 (i) A party is not discharged under this section if (i) the party  
550 asserting discharge consents to the event or conduct that is the basis of  
551 the discharge, or (ii) the instrument or a separate agreement of the  
552 party provides for waiver of discharge under this section either  
553 specifically or by general language indicating that parties waive  
554 defenses based on suretyship or impairment of collateral.]

555 (a) If a person entitled to enforce an instrument releases the  
556 obligation of a principal obligor in whole or in part, and another party  
557 to the instrument is a secondary obligor with respect to the obligation  
558 of such principal obligor, the following rules apply:

559 (1) Any obligations of the principal obligor to the secondary obligor  
560 with respect to any previous payment by the secondary obligor are not  
561 affected. Unless the terms of the release preserve the secondary  
562 obligor's recourse, the principal obligor is discharged, to the extent of  
563 the release, from any other duties to the secondary obligor under this  
564 article.

565 (2) Unless the terms of the release provide that the person entitled to  
566 enforce the instrument retains the right to enforce the instrument  
567 against the secondary obligor, the secondary obligor is discharged to  
568 the same extent as the principal obligor from any unperformed portion  
569 of its obligation on the instrument. If the instrument is a check and the  
570 obligation of the secondary obligor is based on an endorsement of the

571 check, the secondary obligor is discharged without regard to the  
572 language or circumstances of the discharge or other release.

573 (3) If the secondary obligor is not discharged under subdivision (2)  
574 of this subsection, the secondary obligor is discharged to the extent of  
575 the value of the consideration for the release and to the extent that the  
576 release would otherwise cause the secondary obligor a loss.

577 (b) If a person entitled to enforce an instrument grants a principal  
578 obligor an extension of the time at which one or more payments are  
579 due on the instrument and another party to the instrument is a  
580 secondary obligor with respect to the obligation of such principal  
581 obligor, the following rules apply:

582 (1) Any obligations of the principal obligor to the secondary obligor  
583 with respect to any previous payment by the secondary obligor are not  
584 affected. Unless the terms of the extension preserve the secondary  
585 obligor's recourse, the extension correspondingly extends the time for  
586 performance of any other duties owed to the secondary obligor by the  
587 principal obligor under this article.

588 (2) The secondary obligor is discharged to the extent that the  
589 extension would otherwise cause the secondary obligor a loss.

590 (3) To the extent that the secondary obligor is not discharged under  
591 subdivision (2) of this subsection, the secondary obligor may perform  
592 its obligations to a person entitled to enforce the instrument as if the  
593 time for payment had not been extended or, unless the terms of the  
594 extension provide that the person entitled to enforce the instrument  
595 retains the right to enforce the instrument against the secondary  
596 obligor as if the time for payment had not been extended, treat the  
597 time for performance of its obligations as having been extended  
598 correspondingly.

599 (c) If a person entitled to enforce an instrument agrees, with or  
600 without consideration, to a modification of the obligation of a principal

601 obligor other than a complete or partial release or an extension of the  
602 due date and another party to the instrument is a secondary obligor  
603 with respect to the obligation of such principal obligor, the following  
604 rules apply:

605 (1) Any obligations of the principal obligor to the secondary obligor  
606 with respect to any previous payment by the secondary obligor are not  
607 affected. The modification correspondingly modifies any other duties  
608 owed to the secondary obligor by the principal obligor under this  
609 article.

610 (2) The secondary obligor is discharged from any unperformed  
611 portion of its obligation to the extent that the modification would  
612 otherwise cause the secondary obligor a loss.

613 (3) To the extent that the secondary obligor is not discharged under  
614 subdivision (2) of this subsection, the secondary obligor may satisfy its  
615 obligation on the instrument as if the modification had not occurred or  
616 treat its obligation on the instrument as having been modified  
617 correspondingly.

618 (d) If the obligation of a principal obligor is secured by an interest in  
619 collateral, another party to the instrument is a secondary obligor with  
620 respect to such obligation, and a person entitled to enforce the  
621 instrument impairs the value of the interest in collateral, the obligation  
622 of the secondary obligor is discharged to the extent of the impairment.  
623 The value of an interest in collateral is impaired to the extent the value  
624 of the interest is reduced to an amount less than the amount of the  
625 recourse of the secondary obligor, or the reduction in value of the  
626 interest causes an increase in the amount by which the amount of the  
627 recourse exceeds the value of the interest. For the purposes of this  
628 subsection, impairing the value of an interest in collateral includes  
629 failure to obtain or maintain perfection or recordation of the interest in  
630 collateral, release of collateral without substitution of collateral of  
631 equal value or equivalent reduction of the underlying obligation,  
632 failure to perform a duty to preserve the value of collateral owed,

633 under article 9 or other law, to a debtor or other person secondarily  
634 liable, and failure to comply with applicable law in disposing of or  
635 otherwise enforcing the interest in collateral.

636 (e) A secondary obligor is not discharged under subsection (a), (b),  
637 (c) or (d) of this section unless the person entitled to enforce the  
638 instrument knows that the person is a secondary obligor or has notice  
639 under subsection (c) of section 42a-3-419, as amended by this act, that  
640 the instrument was signed for accommodation.

641 (f) A secondary obligor is not discharged under this section if the  
642 secondary obligor consents to the event or conduct that is the basis of  
643 the discharge, or the instrument or a separate agreement of the party  
644 provides for a waiver of discharge under this section specifically or by  
645 general language indicating that the parties waive defenses based on  
646 suretyship or impairment of collateral. Unless the circumstances  
647 indicate otherwise, consent by the principal obligor to an act that  
648 would lead to a discharge under this section constitutes consent to  
649 such act by the secondary obligor if the secondary obligor controls the  
650 principal obligor or deals with the person entitled to enforce the  
651 instrument on behalf of the principal obligor.

652 (g) A release or extension preserves a secondary obligor's recourse if  
653 the terms of the release or extension provide that the person entitled to  
654 enforce the instrument retains the right to enforce the instrument  
655 against the secondary obligor; and the recourse of the secondary  
656 obligor continues as though the release or extension had not been  
657 granted.

658 (h) Except as otherwise provided in subsection (i) of this section, a  
659 secondary obligor asserting discharge under this section has the  
660 burden of persuasion both with respect to the occurrence of the acts  
661 alleged to harm the secondary obligor and loss or prejudice caused by  
662 such acts.

663 (i) If the secondary obligor demonstrates prejudice caused by an



664 impairment of its recourse, and the circumstances of the case indicate  
 665 that the amount of loss is not reasonably susceptible of calculation or  
 666 requires proof of facts that are not ascertainable, it is presumed that the  
 667 act impairing recourse caused a loss or impairment equal to the  
 668 liability of the secondary obligor on the instrument. In such event, the  
 669 burden of persuasion as to any lesser amount of the loss is on the  
 670 person entitled to enforce the instrument.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>October 1, 2003</i>
Sec. 12	<i>October 1, 2003</i>
Sec. 13	<i>October 1, 2003</i>

***Statement of Purpose:***

To adopt amendments to article 3 of the Uniform Commercial Code concerning negotiable instruments in order to conform Connecticut commercial law with recent changes in the uniform law.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: REP. ABRAMS, 83rd Dist.